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# SYMPOSIUM ON SPORTS LAW

## The Regulation of Academic Standards in Intercollegiate Athletics

Ron Waicukauski\*

Incidents of cheating have been periodic if not common occurrences in intercollegiate athletics almost since its inception in 1852, when Yale first met Harvard in a rowing contest on New Hampshire's Lake Winnepesaukee.<sup>1</sup> It was not then particularly surprising when Arizona State University declared eight of its football players ineligible in November 1979 because they had received credit for an extension course they did not attend.<sup>2</sup> There ensued, however, a rash of reports of violations at other universities, including New Mexico, Utah, Oregon, Oregon State, UCLA, and Southern California.<sup>3</sup> The result was a national scandal, the proportions of which, in the words of an official report of the University of Southern California, were "substantially larger and far less innocent"<sup>4</sup> than earlier scandals.

The national news media extensively covered the recent scandal. Newsweek<sup>5</sup> and Sports Illustrated<sup>6</sup> published lengthy cover-page articles that

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1. Harvard won in a contest the character of which is suggested by a remark of one of the Harvard crew, "that they had only rowed a few times for fear of blistering their hands." H. Savage, *American College Athletics* (Bulletin No. 23; The Carnegie Foundation For The Advancement of Teaching) 16-17 (1929). For an historical treatment of scandals in intercollegiate sports, see J. BENAGH, *MAKING IT TO NUMBER ONE: HOW COLLEGE FOOTBALL AND BASKETBALL TEAMS GET THERE* (1976).

2. *Arizona Republic*, Nov. 28, 1979, at G1, col. 1.

3. See Underwood, *The Writing Is on the Wall*, *SPORTS ILLUSTRATED*, May 19, 1980, at 38-39.

4. University of Southern California, *Academic Conduct, Admission, Advisement and Counseling of Student-Athletes at the University of Southern California: A Report to the USC Community* (Oct. 12, 1980) [hereinafter cited as USC Report].

5. *The Shame of College Sports*, *NEWSWEEK*, Sept. 22, 1980, at 54.

were sharply critical of intercollegiate athletics. Newsweek quoted Indiana Basketball Coach Bobby Knight calling the situation "a monumental swamp,"<sup>7</sup> and Sports Illustrated spoke of a "student-athlete hoax," concluding that college sports had become "an abomination to the ideals of higher education."<sup>8</sup> CBS News was equally critical in a "60 Minutes" segment which included an interview with a young man who could neither read nor write after four years of attending college and playing intercollegiate football.<sup>9</sup> These reports suggest an epidemic of corruption in college sports involving a variety of legal, ethical, and rule violations. The focus of most of the criticism has been on the lack of academic integrity that allegedly pervades intercollegiate athletics. Specifically, the nation's colleges and universities were called to task for: recruiting and admitting athletes who patently lacked the intellectual tools to succeed academically; forging and altering transcripts; giving credit for courses not attended; giving grades not warranted by the athlete's academic performance; channeling athletes into courses that are not meaningful; and failing to provide the education or grant the degrees promised to athletes.

Historically, the nation's colleges and universities have relied primarily on action by individual institutions to correct abuses of this sort. In 1948, the National Collegiate Athletic Association adopted a code of conduct to supplement the reliance on institutional control.<sup>10</sup> This code has evolved into an elaborate scheme of regulation designed in part to protect academic standards. Recently, athletes and others have asked courts to recognize legal rights in pursuit of similar ends.<sup>11</sup> This article examines the regulatory scheme of the NCAA in light of the legal initiatives underway and the recent scandal, finds the scheme deficient in several respects, and proposes specific reforms to remedy the deficiencies.

## I. THE REGULATORY SCHEME

The NCAA was formed in 1906 to regulate and supervise college athletics throughout the United States.<sup>12</sup> It is a voluntary association dedi-

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6. Underwood, *supra* note 3.

7. NEWSWEEK, *supra* note 5, at 54.

8. Underwood, *supra* note 3, at 38.

9. Broadcast on February 3, 1980; segment entitled, "Losers".

10. E. SHEA & E. WIEMAN, ADMINISTRATIVE POLICIES FOR INTERCOLLEGIATE ATHLETICS 16 (1967).

11. See *infra* text accompanying notes 111-56.

12. The NCAA was formally organized on March 31, 1906 following a conference convened late in 1905 by President Theodore Roosevelt. Roosevelt was concerned in particular about brutality in intercollegiate football and what he perceived as an increasingly pervasive win-at-any-cost philosophy. He told the colleges to take remedial action or he would put an end to the whole enterprise. In

cated to maintaining athletic activities "on an ethical plane in keeping with the dignity and high purpose of education."<sup>13</sup> Almost all of the major colleges and universities in the United States are members.<sup>14</sup> There are other national associations regulating intercollegiate sports, including the National Association of Intercollegiate Athletics (NAIA) composed of approximately 500 small four-year colleges and universities;<sup>15</sup> the National Junior College Athletic Association (NJCAA), with a membership of about 600 two-year colleges in its men's division;<sup>16</sup> and the Association of Intercollegiate Athletics for Women (AIAW), controlling women's sports for almost 800 colleges and universities.<sup>17</sup> The NCAA, however, is the oldest, wealthiest, and most powerful of the national associations, governing the largest, richest, and most popular sports programs in higher education.<sup>18</sup> Accordingly, regulation by the NCAA is the focus of this inquiry.

Not all NCAA members engage in big-time college sports; the majority in fact do not.<sup>19</sup> To accommodate the differing sports interests and activities

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response, the NCAA was formed "to codify, promulgate, and enforce rules and regulations which would ensure proper behaviors on and off the field . . . ." Hanford, *Controversies in College Sports*, 445 ANNALS 66, 68 (1979); see Lewis, *Theodore Roosevelt's Role in the 1905 Football Controversy*, 40 RESEARCH Q. 717 (1969).

13. The first NCAA Constitution provided:

Its object shall be the regulation and supervision of college athletics throughout the United States, in order that the athletic activities of the colleges and universities of the United States may be maintained on an ethical plane in keeping with the dignity and high purpose of education. The method of control selected was that the Colleges and Universities enrolled in this Association severally agree to take control of student athletic sports as far as may be necessary to maintain in them a high standard of personal honor, eligibility and fair play, and to remedy whatever abuses exist.

E. SHEA & E. WIEMAN, *supra* note 10, at 14.

14. As of October 1980, the NCAA had 883 members consisting of 740 colleges and universities who are active members and 143 other allied, associate, and affiliate members such as conferences and other athletic organizations.

15. *The Final Report of the President's Commission on Olympic Sports 1975-1977*, Vol. II, 325 (1977).

16. *Id.* at 383.

17. The AIAW active membership for 1981-1982 includes 772 institutions. Complaint, AIAW v. NCAA, Civil No. — (D.D.C. October 1981). This represents a 20% decline from the 970 members reported in the AIAW Handbook for 1980-1981. The principal reason for the decline is that beginning in the 1981-1982 school year the NCAA is offering championships in women's sports and many institutions have elected to drop their membership in the AIAW and pursue women's sports solely under NCAA regulation.

18. It has been judicially noted that the NCAA is the "dominant" intercollegiate sports organization. *College Athletic Placement Service, Inc. v. NCAA*, 1975 Trade Cas. (CCH) ¶ 60,117 (D.N.J.), *aff'd*, No. 74-1904 (3d Cir., Nov. 25, 1974).

19. In 1980, of 740 NCAA colleges and universities participating in intercollegiate athletics, 271 were classified in Division I, 188 in Division II, and 281 in Division III. NCAA ANNUAL REPORTS 1979-1980.

of its members, the NCAA is divided into three divisions.<sup>20</sup> Division I consists predominantly of universities supporting big-time programs while Divisions II and III are composed of universities that maintain more modest programs.<sup>21</sup> NCAA regulations vary in some respects among these divisions. For example, Division II is more restrictive than Division I in the number of athletic grants-in-aid that may be awarded,<sup>22</sup> and Division III, unlike Divisions I and II, prohibits awarding financial aid to any student-athlete except upon a showing of financial need.<sup>23</sup>

All divisions are subject to the principal NCAA rules governing academic standards in intercollegiate athletics. These rules are guided by the constitutionally prescribed "Fundamental Policy" of the Association to maintain intercollegiate athletics "as an integral part of the educational program and the athlete as an integral part of the student body."<sup>24</sup> This policy is implemented initially through Article Three, Section 3 of the Constitution. This provision, entitled the "Principle of Sound Academic Standards," imposes four requirements for a student-athlete to be eligible to represent his institution in intercollegiate athletic competition.<sup>25</sup> First,

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20. For purposes of intercollegiate football, the NCAA is also divided into Division I-A and I-AA, further separating the truly big-time institutions from the others. Pursuant to legislation passed at a special convention held on December 4-5, 1981, in order to be a member of Division I-A, an institution must have had an average home football attendance of 17,000 over the last four years or a home stadium capacity of 30,000. Approximately 94 institutions should qualify (down from 137), leaving 90 schools in Division I-AA (up from 50). St. Louis Post-Dispatch, Dec. 6, 1981, at 8.

21. Sections 1, 2, and 3 of NCAA Bylaw Article 10 describe the criteria for membership in Divisions I, II and III. Bylaws and Interpretations of the National Collegiate Athletic Association 10-1 to 10-3, *reprinted in* NATURAL COLLEGIATE ATHLETIC ASSOCIATION, 1981-1982 MANUAL OF THE NATIONAL COLLEGIATE ATHLETIC ASSOCIATION 108-14 (1981) [hereinafter cited as NCAA MANUAL].

22. Bylaws and Interpretations of the National Collegiate Athletic Association 6-5, *reprinted in* NCAA MANUAL, *supra* note 21, at 90-93.

23. Bylaws and Interpretations of the National Collegiate Athletic Association 10-3-(a), *reprinted in* NCAA MANUAL, *supra* note 21, at 111.

24. *Fundamental Policy.* (a) The competitive athletic programs of the colleges are designed to be a vital part of the educational system. A basic purpose of this Association is to maintain intercollegiate athletics as an integral part of the educational program and the athlete as an integral part of the student body and, by so doing, retain a clear line of demarcation between college athletics and professional sports. NCAA CONST. art. 2, § 2, *reprinted in* NCAA MANUAL, *supra* note 21, at 7-8.

25. *Principle of Sound Academic Standards.* (a) A student-athlete shall not represent an institution in intercollegiate athletic competition unless the student-athlete: (1) Has been admitted in accordance with the regular published entrance requirements of that institution; (2) Is in good academic standing as determined by the faculty of that institution, in accordance with the standards applied to all students, and (3) Is enrolled in at least a minimum full-time program of studies and is maintaining satisfactory progress toward a baccalaureate or equivalent degree as determined by the regulations of that institution, except that a student-athlete who is enrolled in less than a minimum full-time program of studies and has athletic eligibility remaining may participate if the

the student-athlete must be admitted in accordance with the regular published entrance requirements of the institution. Second, he must be in good academic standing with the university in accordance with the standards applied to all students. Third, he must be enrolled in a minimum full-time program of studies. And fourth, he must be making satisfactory progress toward a degree.

These constitutional requirements are supplemented by provisions in the NCAA bylaws to insure that college athletes are genuine students. Bylaw 5-1-(c) requires that an athlete be registered in a minimum of 12 hours of courses to be eligible to participate in an NCAA championship in any sport.<sup>26</sup> Bylaw 5-1-(j)-(2) adds that a freshman will not be eligible for Division I competition unless he has graduated from high school with a minimum 2.000 grade point average on a 4.000 scale.<sup>27</sup> Student-athletes transferring from junior colleges to NCAA institutions are subject to restrictions requiring that they demonstrate a minimal level of academic competence before participating in NCAA competition.<sup>28</sup> Most notable among these restrictions is the recently enacted requirement that the athlete graduate from junior college to be eligible during his first year at a

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student-athlete is carrying for credit the courses necessary to complete degree requirements as determined by the faculty of the institution. Further, a student-athlete who has received a baccalaureate or equivalent degree and who is enrolled in the graduate or professional school of the institution attended as an undergraduate, or who is enrolled and seeking a second baccalaureate or equivalent degree at the same institution, may participate in intercollegiate athletics provided the student-athlete has athletic eligibility remaining and such participation occurs within five years after initial enrollment in a collegiate institution.

NCAA CONST. art. 3, § 3, *reprinted in NCAA MANUAL*, *supra* note 21, at 16-17.

26. The student-athlete must, at the time of competition, be registered for at least a minimum full-time program of studies as defined by the institution, which, in any event, shall not be less than 12 semester hours or 12 quarter hours (or a similar minimum academic load as determined by the NCAA Eligibility Committee in an institution which determines registration other than on a traditional semester or quarter hour basis or conducts a cooperative education program; or a minimum full-time graduate program as defined by the institution and approved by the NCAA Eligibility Committee in the event fewer than 12 hours are required, but which may be no fewer than eight hours); further, if the competition takes place between terms, the student-athlete must have been so registered in the term immediately preceding the date of competition.

Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(c), *reprinted in NCAA MANUAL*, *supra* note 21, at 70.

27. "An entering freshman with no previous college attendance who matriculates as a 2.000 non-qualifier in a Division I institution and whose matriculation was solicited per O.I. 100 shall not be eligible for financial aid, regular-season competition and practice during the first academic year in residence." Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(j)-(2), *reprinted in NCAA MANUAL*, *supra* note 21, at 73.

28. *See, e.g.*, Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(j)-(8) & (10), 5-(1)-(k), 5-(1)-(n), *reprinted in NCAA MANUAL*, *supra* note 21, at 75-77, 81.

Division I institution if he did not achieve a 2.000 grade point average in high school.<sup>29</sup>

Another recently enacted bylaw strengthens the constitutional requirement that a student-athlete make satisfactory progress toward a degree by specifying that he complete 12 semester or quarter hours for each term he has been enrolled to remain eligible for competition after his freshman year.<sup>30</sup>

Academic standards are protected by the NCAA, not only through these constitutional provisions and bylaws adopted by the full NCAA membership at the annual NCAA convention, but also through official interpretations adopted by the NCAA Council, the body which governs between conventions, or by the president, secretary-treasurer, and executive director, between meetings of the council.<sup>31</sup> One such interpretation, Official Interpretation 8, seeking to avoid a repetition of the recent scandal, excludes the use of correspondence and extension courses taken from other institutions in determining "academic standing" or "satisfactory progress", rendering such courses useless for maintaining eligibility.<sup>32</sup>

In addition to these regulations that directly control academic standards, the NCAA has many other regulations with the purpose or effect of protecting academic standards in college sports. Article 3 of the NCAA Bylaws limits playing and practice seasons in football, soccer, and basketball.<sup>33</sup> It also limits the number of games that may be played in

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29. NCAA Bylaw 5-1-(j)-(9) provides: "A transfer student from a junior college who was a 2.000 nonqualifier is not eligible in Division I institutions for financial aid, practice, regular-season competition and for any NCAA championships the first academic year in residence unless the student has graduated from the junior college." Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(j)-(9), *reprinted in* NCAA MANUAL, *supra* note 21, at 75-76.

30. Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(j)-(6), *reprinted in* NCAA MANUAL, *supra* note 21, at 74.

31. See NCAA CONST. art 6, § 2, *reprinted in* NCAA MANUAL, *supra* note 21, at 38. Article Six of the NCAA Constitution also speaks of "Executive Regulations" and "Resolutions." Neither of these appear to be of consequence in the regulation of academic standards and are therefore not treated herein.

32. NCAA CONST. art. 3, § 3, O.I. 8, *reprinted in* NCAA MANUAL, *supra* note 21, at 17-18.

33. NCAA Bylaw 3-1 prohibits preseason practice as follows: In basketball — before October 15; in football — 19 days before the first game or 22 days before the next-to-last Saturday in September or on that date which will permit no more than 29 "practice opportunities" prior to the first game; and, in soccer — before September 1 or on the first day of classes or 19 days prior to the first game. NCAA Bylaw 3-2 limits the playing seasons as follows: In basketball — to the period from the last Saturday in November for Division I and the next-to-the-last Saturday for Divisions II and III to the date of the championship game in the NCAA Basketball Tournament; in football, and soccer — "to the traditional fall season" with provision for a spring football game and one post-season contest. Bylaws and Interpretations of the National Collegiate Athletic Association 3-1, 3-2, *reprinted in* NCAA MANUAL, *supra* note 21, at 62-65.

these sports.<sup>34</sup> The effect of these limitations is to reduce the time some student-athletes must spend away from studies.

Probably the most complex and detailed rules of the NCAA regulate recruiting. Among other things, these rules limit the financial aid or benefits that may be offered to an athlete, his relatives, or friends as an inducement to attend a particular school.<sup>35</sup> Presumably, the athlete then will make his decision based on appropriate educational concerns rather than considerations unrelated to his educational goals. The rules provide that representatives of an institution may contact a student in person only three times at his high school and three times at sites away from the school.<sup>36</sup> A prospect may visit a campus only once at the institution's expense, and that visit may not exceed 48 hours.<sup>37</sup> Prospects are limited to six paid visits to NCAA institutions.<sup>38</sup> No tryouts are permitted.<sup>39</sup> These restrictions all serve to reduce the disruption to the athlete's high school studies caused by the recruiting process.<sup>40</sup>

NCAA regulations exclude from eligibility in a sport any athlete who has received pay for participating in that sport.<sup>41</sup> Institutions may provide financial aid to a student-athlete, but such aid is limited essentially to tuition and fees, room and board, and required course-related books.<sup>42</sup> The intent is to limit intercollegiate sports to genuine amateurs—students who participate in sport as an avocation.<sup>43</sup> Presumably, their principal ac-

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34. NCAA Bylaw 3-3 limits the number of games in basketball to 27 in Divisions I and II, 26 in Division III; in football to 11; and in soccer to 22. For purposes of these restrictions, football bowl games, post-season tournament basketball games and games in Hawaii and Alaska are not counted. Bylaws and Interpretations of the National Collegiate Athletic Association 3-3, *reprinted in NCAA MANUAL*, *supra* note 21, at 65-66.

35. Bylaws and Interpretations of the National Collegiate Athletic Association 1-1-(b), *reprinted in NCAA MANUAL*, *supra* note 21, at 43.

36. Bylaws and Interpretations of the National Collegiate Athletic Association 1-2, *reprinted in NCAA MANUAL*, *supra* note 21, at 43-44.

37. Bylaws and Interpretations of the National Collegiate Athletic Association 1-8-(a), *reprinted in NCAA MANUAL*, *supra* note 21, at 50.

38. Bylaws and Interpretations of the National Collegiate Athletic Association 1-8-(c), *reprinted in NCAA MANUAL*, *supra* note 21, at 51.

39. Bylaws and Interpretations of the National Collegiate Athletic Association 1-6-(a), *reprinted in NCAA MANUAL*, *supra* note 21, at 48.

40. These restrictions also serve other purposes including perhaps, most importantly, "to reduce recruiting and operating costs by restraining competition." Koch, *A Troubled Cartel: The NCAA*, 38 *LAW AND CONTEMP. PROBS.* 135, 138 (1973).

41. NCAA CONST. art. 3, § 1-(a), *reprinted in NCAA MANUAL*, *supra* note 21, at 9. It is possible for a student to be a professional in one sport and participate in NCAA competition in another.

42. NCAA CONST. art. 3 §§ 1-(g), 4, *reprinted in NCAA MANUAL*, *supra* note 21, at 12, 18.

43. This idea is expressed in the "Principle of Amateurism and Student Participation": "An amateur student-athlete is one who engages in a particular sport for the educational, physical, mental and social benefits derived therefrom and to whom participation in that sport is an avocation." NCAA CONST. art. 3, § 1, *reprinted in NCAA MANUAL*, *supra* note 21, at 9.



tivity is not athletics but getting an education.

In a similar vein, NCAA bylaws 5-1-(d) and 4-1 limit eligibility for a student-athlete to four seasons of intercollegiate competition during five calendar years beginning with the term in which he first registers.<sup>44</sup> By-law 5-1-(d)-(3) adds that participation in any organized competition in a sport during any twelve-month period after the student's twentieth birthday and prior to matriculation at an NCAA institution shall count as one year of competition.<sup>45</sup> The net result of these three provisions is to restrict NCAA competition to individuals who have certain credentials associated with real students—they are only temporarily engaged in the college sport (no more than four seasons in five years) and are relatively inexperienced, not having engaged in the organized sport for more than four years after reaching age 20.

Considered collectively, these regulations present an extraordinary set of detailed requirements. Indeed, no other area of higher education is as heavily controlled by extra-institutional regulation as intercollegiate sports.<sup>46</sup> In addition to the regulations of the NCAA, which constitute the bulk of a 300-page manual, most universities are members of athletic conferences which prescribe additional rules. For example, the Big Ten Conference has an elaborate regulatory system, described in a 163-page conference handbook, which is in many respects more stringent than the NCAA.<sup>47</sup>

These NCAA and conference regulations are not mere window dressing, simply to be ignored; at least in some cases, institutions must follow them to the letter or risk substantial penalties. In 1978 and 1979, a congressional investigation focused on the elaborate NCAA enforcement program, not because it was too weak, but because it was, allegedly, too harsh and unfair.<sup>48</sup> The NCAA employs a full time staff of thirteen in its enforcement division, including eight investigators.<sup>49</sup> This staff assists the NCAA Committee on Infractions in developing information about violations of the NCAA's academic and athletic standards.<sup>50</sup> If a violation is

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44. Bylaws and Interpretations of the National Collegiate Athletic Association 4-1, 5-1-(d), reprinted in NCAA MANUAL, *supra* note 21, at 69-71.

45. Bylaws and Interpretations of the National Collegiate Athletic Association 5-1-(d)-(3), reprinted in NCAA MANUAL, *supra* note 21, at 70-71.

46. Gerber, *The Legal Basis for the Regulation of Intercollegiate Sport*, 60 EDUC. REC. 467, 481 (1979). See Weistart, *Forward*, 38 LAW & CONTEMP. PROBS. 1 (1973).

47. Handbook of the Intercollegiate (Big Ten) Conference (1980).

48. *NCAA Enforcement Program: Hearings Before the Subcomm. on Oversight and Investigations of the House Comm. on Interstate and Foreign Commerce*, 95th Cong., 2d Sess. and 96th Cong., 1st Sess. (1978-1979) (hereinafter *NCAA Enforcement Hearings*).

49. See NCAA MANUAL, *supra* note 21, at 190.

50. Official Procedure Governing the NCAA Enforcement Program §§ 2-3, reprinted in NCAA

found, the Committee on Infractions is empowered to impose a variety of penalties ranging from a private reprimand and censure to closing down an institution's intercollegiate sports program for a specified period.<sup>51</sup> The NCAA Council has similar power acting essentially in the capacity of an appellate tribunal.<sup>52</sup> The most severe penalty that the association can impose is to expel a member; that action may only be taken by the full membership at its annual convention.<sup>53</sup>

During its first 25 years in operation from 1952-1977, the NCAA enforcement machinery considered 993 cases and took disciplinary action in 548.<sup>54</sup> In most cases, the penalty was mild, but there are numerous instances in which punitive action was substantial.<sup>55</sup> The most severe was the penalty imposed in 1973 on the University of Southwestern Louisiana for numerous willful violations of rules governing recruiting, financial aid, and admission requirements. For these offenses, the Association excluded the university's basketball team from all competition for two years, placed all sports on probation for four years, and for that period, denied the university voting and membership privileges on NCAA committees.<sup>56</sup> The NCAA has strong enforcement tools available and has demonstrated the will to use them.

The athletic conferences also have enforcement authority and are using it. On August 11, 1980, The Pacific Ten Conference declared five of its members ineligible for the league's 1980 football championship and post-season games, including the Rose Bowl.<sup>57</sup> The Conference imposed the penalties for "violations of conference rules and standards in the areas of unearned credits, falsified transcripts, and unwarranted intrusion of athletic department interests into the academic process of the respective universities."<sup>58</sup> A complicated controversy with the University of Illinois and quarterback David Wilson recently involved the Big Ten. The crux of the dispute was that the Conference was unwilling to soften its academic standards for the benefit of Wilson. Based on certain actions by Illinois

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MANUAL, *supra* note 21, at 163-64.

51. Section 7-(b) of the Enforcement Program lists twelve disciplinary measures available to the Committee on Infractions and the NCAA Council. Official Procedure Governing the NCAA Enforcement Program § 7-(b), *reprinted in* NCAA MANUAL, *supra* note 21, at 166-67.

52. Official Procedure Governing the NCAA Enforcement Program §§ 5-7, *reprinted in* NCAA MANUAL, *supra* note 21, at 165-67.

53. NCAA CONST. art. 4, § 6, *reprinted in* NCAA MANUAL, *supra* note 21, at 29-30.

54. *NCAA Enforcement Hearings*, *supra* note 48, at 1512.

55. See NCAA Enforcement Summary in *NCAA Enforcement Hearings*, *supra* note 48, following 1512.

56. *Id.*

57. Chron. Higher Educ., Aug. 25, 1980, at 3.

58. *Id.*

personnel in handling the Wilson matter, the Conference believed that the university was not adequately dedicated "to conference principles which place academic standards ahead of athletic interests."<sup>59</sup> Accordingly, the Conference placed the university on probation, prohibited its participation in post-season football contests for one year, and excluded it from sharing certain conference revenues resulting in a loss to the university of an estimated \$500,000.<sup>60</sup>

From this cursory review, it appears that the regulatory scheme of the NCAA and its member conferences is adequate to protect the academic integrity of intercollegiate sports. Regulations, supported by powerful enforcement machinery, purport to insure that the athletes who represent the nation's colleges are academically qualified to be genuine students and that they are successfully pursuing a full-time course of study toward a degree. The reality, though, is that they fail to achieve either objective.

## II. REGULATING ADMISSIONS

The preponderance of the evidence available demonstrates that many institutions are enrolling athletes who are not academically qualified for college. Consider the case of the University of Southern California. Over the years it has won 63 NCAA team titles, far more than any other school and 17 Rose Bowls, and it has been named national football champion eight times.<sup>61</sup> Athletes who were admitted to the university by the department of athletics achieved at least some of these honors. Dr. John Hubbard, former president of USC, told the admissions office "to keep hands off."<sup>62</sup> Between 1970 and 1980, the athletics department exercised its admission authority to enroll 330 students "based chiefly on athletic prowess" although academically they "fell below normal USC standards of admission."<sup>63</sup> As Red Smith, dean of American sportswriters said, the cheating at USC may have been "more widespread, more brazen, more cynical than elsewhere,"<sup>64</sup> but there appears little reason to believe that USC is unique in enrolling athletes unqualified to be students.

Some institutions have admitted functionally illiterate athletes. Fred Butler was an outstanding high school football player at Morningside High School in Englewood, California. He graduated 190th out of 355

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59. Report, Decision of the Intercollegiate Conference of Faculty Representatives Concerning the University of Illinois (April 27, 1981) at 19 [hereinafter cited as Faculty Representatives Report].

60. Chi. Tribune, Aug. 6, 1981, § 3, at 1, col. 1.

61. SPORTS ILLUSTRATED, Oct. 27, 1980, at 19.

62. N.Y. Times, Oct. 15, 1980, at B8, col. 3.

63. USC Report, *supra* note 4, at 9.

64. N.Y. Times, Oct. 26, 1980, § 5 at 4, col. 1.

students in his high school class and then went to El Camino Junior College where he led the football team to a conference championship. He moved on to California State University at Los Angeles where he completed the remaining years of his college athletic eligibility. At the time of his admission, and even after four years of attending college, Fred Butler could not read or write. He is unable even to read a menu in a restaurant and must rely on pictures or the assistance of a friend.<sup>65</sup>

Illiterate statements from student-athletes in NCAA files demonstrate vividly that Fred Butler is not an isolated example.<sup>66</sup> Sports sociologist Harry Edwards estimates that 20 to 25% of black athletes at four-year colleges are functionally illiterate,<sup>67</sup> and clearly, the problem of illiteracy is not restricted to blacks. It is obvious why universities seek to admit such students—to better compete on the athletic field and thereby reap the enormous rewards which now accrue to those who are successful in intercollegiate sports.<sup>68</sup> What is not so obvious is how such students are admitted in compliance with NCAA regulations.

As outlined above, to be eligible for NCAA competition, a student-athlete must have “been admitted in accordance with the regular published entrance requirements of that institution”<sup>69</sup> and if a freshman in Division I, must have accumulated a 2.000 high school grade point average on a 4.000 scale.<sup>70</sup> In practice, these requirements have not proved to be a significant obstacle to the enrollment of academically deficient athletes. The requirement that athletes be admitted in accordance with regular published entrance requirements is of almost no force because the “regular published entrance requirements” of most universities are sufficiently flexible to qualify persons with little or no academic ability. Even the extraordinary admission practices of the University of Southern California are probably in compliance. As representatives of the university

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65. Chi. Tribune, Nov. 5, 1978, § 1, at 1, col. 2.

66. SPORTS ILLUSTRATED, May 19, 1980, at 39.

“I think he [a coach] did visied me a school one . . . . Since I have been at [the school], Coach [name deleted] have not give me any money, period. But he have lend me five to tin dollars but I have paid it back to.” And, “Coach [name deleted] give me a 5 or 6 dr. to do my clothis with but other than that he have not give me any money.”

67. THE PROGRESSIVE, April 1979, at 48.

68. Fordham Basketball Coach Tom Penders observes, “Unfortunately, board scores are usually inversely proportionate to a kids athletic ability.” N.Y. Times, Feb. 8, 1981, § V, at 4, col. 2. He laments that only five per cent of quality high school players qualify for admission at his institution. *Id.* Obviously, if he cannot get that five per cent, he will be at a tremendous competitive disadvantage unless the institution's admissions standards are lowered.

69. NCAA CONST. art. 3, § 3-(a)-(1), *reprinted in* NCAA MANUAL, *supra* note 21, at 16.

70. Bylaws and Interpretations of the National Collegiate Athletic Association 5-(1)-(i)-(2), *reprinted in*, NCAA MANUAL, *supra* note 21, at 73.

have explained, the school enrolled the athletes under a special program designed for disadvantaged students who fail to meet the usual requirements for admission.<sup>71</sup> As it turned out, approximately 25% of USC's total undergraduate special admissions were scholarship athletes.<sup>72</sup> Other schools also have not hesitated to abuse similar programs to serve athletic ends.<sup>73</sup> The NCAA investigated one school in the Southwest and found half the special admissions were scholarship athletes.<sup>74</sup> Stephen Morgan of the NCAA's enforcement division reported, "We've seen some academic records for athletes that were almost laughable. But when we approach the school, they say, 'we have no minimum standards.'"<sup>75</sup> Consequently, the NCAA has yet to find its first violation of the rule requiring application of regular published admission standards.<sup>76</sup>

The 2.000 Rule has more teeth but not many. If high school transcripts were accurate and if satisfactory grades in high school really meant that a student had demonstrated some academic competence, the rule would be meaningful. Often, however, neither of these requisite conditions are met. Some high schools today "grant a 2.0 average if a warm body appears in class without slugging the teacher . . . ."<sup>77</sup> Even in those schools that maintain meaningful standards, outstanding athletes who have the opportunity to receive an NCAA athletic grant-in-aid often receive gratuitous grades. The NCAA reports seeing transcripts of outstanding athletes who go into their final year of high school with a 1.7 average and receive a 3.0 average or better in their senior year without attending class to finish with the requisite 2.0.<sup>78</sup> If the teachers fail to "help the kid out" by inflating his grades, school administrators and athletic departments sometimes falsify transcripts "so that young athletes turn up with A's and B's where

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71. N.Y. Times, Oct. 17, 1980, § B, at 5, col. 1.

72. SPORTS ILLUSTRATED, Oct. 27, 1980, at 19.

73. Jim Benagh reports in his book, MAKING IT TO NUMBER ONE, that for many years, Rutgers University had difficulty competing in big-time intercollegiate sports because of its academic entrance requirements. That, however, changed when the university opened the doors of its Livingston College to "underprivileged youth with the potential to benefit from higher education though lacking the necessary academic background. Before long, Livingston College was filled up with black athletes. Good ones." J. BENAGH, *supra* note 1, at 70.

74. J. UNDERWOOD, THE DEATH OF AN AMERICAN GAME 248 (1979).

75. Chron. Higher Educ., Dec. 15, 1980, at 8, col. 1.

76. SPORTS ILLUSTRATED, Oct. 27, 1980, at 19.

77. J. MICHENER, SPORTS IN AMERICA 198 (1976).

78. *Id.* The gift of unearned grades is one illustration of what Robert Lipsyte calls "The Varsity Syndrome" in which athletes are granted privileges denied the rest of us. "Those privileges begin with favors and gifts in grade school, little presents like an unearned diploma, perhaps a college scholarship. Athletes are waved, as it were, through the toll booths of life." Lipsyte, *Varsity Synrome: The Unkindest Cut*, ANNALS 15, 19 (1979).

they originally had D's and F's."<sup>79</sup> The result is that high school grades are now seldom a factor in schools with big-time sports.<sup>80</sup>

There are, of course, some athletes who are unable legitimately or illegitimately to obtain the requisite high school transcript with a 2.0 average. For such athletes, the junior colleges offer a viable route to big-time college sports. Usually, a high school degree is not needed, and once enrolled, the athlete can often achieve sufficient academic success to move on to a four-year NCAA institution without any real demonstration of academic competence. Witness the Fred Butler case; likewise, the case of David Wilson, the Illinois quarterback. Wilson was a nonqualifier in high school with a 1.81 grade point average.<sup>81</sup> In junior college he accumulated a much improved 2.63 grade point average largely through excellent grades in basketball, racquetball, body development, weight training, and seven courses in football, which served to overshadow poor grades in such courses as reading and composition, philosophy, and American literature.<sup>82</sup> This academic performance fully satisfied NCAA requirements.

A few years ago NCAA requirements were somewhat tougher, at least for incoming freshman. From 1966 to 1973, to be eligible, a freshman had to "predict" an ability to maintain a 1.600 grade point average (C-) in college, based upon (1) high school grades or rank in class and (2) a score on a scholastic aptitude examination.<sup>83</sup> The rule was intended to accomplish three objectives: to reduce the possibility of exploiting young athletes by recruiting those who would likely be unable to meet the necessary academic requirements for a degree; to foster the concept that college sports are engaged in by athletes who were first and primarily students; and to encourage the student who could not meet the requirements of the rule to devote his full freshman year to study and not engage in athletics.<sup>84</sup> Notwithstanding such noble purposes, the rule proved too restrictive for the

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79. J. MICHENER, *supra* note 77, at 198. Michener adds, "I have six such cases on my desk as I write." *Id.* This activity is not a recent phenomenon. Savage noted in his 1929 report for the Carnegie Foundation: "Grades assigned by school teachers for particular courses are known to have been raised by certifying officers on solicitation of college coaches or alumni in order to enable boys to slip easily into college. The complaints of not a few college officials, verified by field agents of this study, indicate that these dishonest practices are far more extensive than is generally realized." Savagem *supra* note 1.

80. J. BENAGH, *supra* note 1, at 70.

81. Faculty Representatives Report, *supra* note 59, at 4.

82. Wilson's junior college transcript was incorporated in the complaint in *Wilson v. NCAA et al.*, No. 80-C-801 (Illinois Circuit Court, 6th District, Champaign County, filed Aug. 19, 1980).

83. Note, *Judicial Review of Disputes Between Athletes and The National Collegiate Athletic Association*, 24 STAN. L. REV. 903, 905 (1972), citing the NCAA MANUAL 1971-1972 at 40-44, 45-48.

84. *Associated Students, Inc. v. NCAA*, 493 F.2d 1251, 1255 (9th Cir. 1974).

NCAA membership who discarded it in 1973 in favor of the more relaxed 2.000 rule.<sup>85</sup> One effect of the change is that a substantial percentage of present major college athletes fail to meet even the relatively low 1.600 test.

In fairness, the problem of maintaining academic standards in admissions is not limited to athletes. With the advent in recent years of affirmative action programs, declining college enrollments, open admission policies, decreasing SAT scores, and increasing illiteracy among high school graduates, many young men and women are admitted into college, but they are unequipped by training and intellect to do college level work.<sup>86</sup> In a sense, the academic deficiencies of athletes are merely one part of a much larger problem afflicting higher education in America.<sup>87</sup> It is, however, a part with special attributes that may be analyzed and addressed separately.

The rewards for success in intercollegiate athletics to schools, coaches, and athletes present unique incentives for abusing the admissions process. It is clear that such abuses are occurring. Universities may be admitting other poor students, but on the average, athletes have lower school records, test scores, and academic prediction at the time of admission than their non-athlete classmates.<sup>88</sup> Moreover, unlike most other students of limited academic ability, they are intensely recruited to attend college and awarded grants-in-aid for virtually all their college expenses. The existing NCAA rules are one regulatory response to athletic abuses of the admissions process. As written, however, in the circumstances of contemporary American education, they are inadequate. Perhaps a complete cure must await resolution of the broader issues in education, but more can and should be done to address directly the separable problem of bending admission standards for athletic purposes.

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85. See Cross, *The College Athlete and the Institution*, 38 LAW & CONTEMP. PROBS. 151, 158-59 (1973) (explaining that pressure for special admissions and concern for institutional autonomy were the principal reasons given for the change).

86. See T. GROSS, *ACADEMIC TURMOIL: THE REALITY AND PROMISE OF OPEN EDUCATION* (1980), (noting, *inter alia*, that open admissions at The City College of New York meant opening college doors to "excessive numbers of poorly trained students," at 11; and that "the most dramatic reason why literacy became a national problem was the opening of admissions everywhere," at 60); S. BLUMENFELD, *THE NEW ILLITERATES* (1973) ("In the last twenty years the United States has undergone a staggering degeneration of its literary skills, on all levels of society, affecting small children in school, high school students, college students, factory workers, corporation executives, from ghetto dropouts to suburban middle-class youths," at 23).

87. See The Carnegie Council on Policy Studies in Higher Education: *A Summary of Reports and Recommendations* (1980).

88. G. HANFORD, *REPORT TO THE AMERICAN COUNCIL ON EDUCATION ON AN INQUIRY INTO THE NEED FOR AND FEASIBILITY OF A NATIONAL STUDY OF INTERCOLLEGIATE ATHLETICS* 131 (1974) (hereinafter cited as *THE HANFORD REPORT*).

## III. REGULATING ACADEMIC PERFORMANCE

Admission is just the first point in an athlete's college career at which the NCAA may seek to protect academic standards. Further opportunities are presented during the athlete's years of possible eligibility. As described above,<sup>89</sup> the NCAA Constitution and Bylaws provide a variety of regulations affecting this period to insure that the athlete is performing satisfactorily as a student. Their success in achieving that goal is uncertain at best.

One potential measure of that success is the percentage of athletes that graduate. If an athlete earns a degree, that is strong (though not conclusive) evidence that his academic performance was adequate and that he was a genuine student. Unfortunately, there are no good comprehensive statistics about this basic fact. Various limited studies suggest that a large percentage of student-athletes fail to graduate. For example, a study of the Southwest Conference indicates that only one-third of black athletes graduate, although approximately three-quarters of the white athletes do.<sup>90</sup> Harry Edwards surveyed the graduation rate of black scholarship athletes at the University of California from 1971 to 1978 and found that "between 70% and 80% didn't graduate—even the ones who came to Berkeley with two years of junior college."<sup>91</sup> An older study at Michigan State University found that for students entering between 1960 and 1964, 83% of the white athletes and 46.3% of the black athletes had graduated by 1970.<sup>92</sup> A recent survey of professional athletes, the majority of whom participated in college athletics for four years, disclosed that 70% of professional basketball players do not have college degrees and 80% of football players coming into the NFL in 1981 had failed to earn college degrees.<sup>93</sup>

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89. See *supra* text accompanying notes 12-60.

90. Burwell, *Scholarship Athletes: Is There Life After Football?*, Chron. Higher Educ., Nov. 26, 1979, at 21.

91. Underwood, *supra* note 3, at 65. The University of California undertook an official study to determine its graduation rates. A short oral report was made concerning this study to the NCAA Convention in January 1981, in which it was indicated that the graduation rate for California athletes was roughly equal to that for nonathletes. The actual data, however, has not been made public and requests by the author for the data have been denied.

92. Brown, *Race, Sport, and Academe, Report, of the Task Force on the Black Athlete*, in THE HANFORD REPORT, *supra* note 88, at 67. The report also disclosed the following: "At the University of Washington between 1957-1967, seven black football players graduated, 13 did not; at the University of Oregon between 1965-1968, six black athletes graduated, five did not; at the University of Utah only 12 of 46 black athletes eventually received degrees; and at Utah State only nine of 40 black athletes graduated . . . ." *Id.*

93. H. Edwards, "Exploitation and the NCAA," Presentation at the Second Annual Conference of the North American Society for the Sociology of Sport (Nov. 15, 1981). J. Durso reports the



On May 1, 1981, the NCAA released a report of the largest study yet done on graduation rates of student-athletes.<sup>94</sup> It indicates that of male athletes entering 46 colleges in Fall 1975, 52% had graduated by spring 1980 (within five years) and that among the 46 colleges the median graduation rate for athletes was 36.9%.<sup>95</sup> Another 13.5% of the athletes were still enrolled in their institutions, apparently continuing to pursue a degree.<sup>96</sup> The graduation rates for athletes in football (42.9%) and basketball (41.9%) were lower than in other sports.<sup>97</sup> Comparing this data with the graduation rate of nonathletes, the study reported that the athletes had done better: 52% graduating versus 41.5%.<sup>98</sup>

Although this data may be the most comprehensive yet produced, it must be interpreted with caution. Initially, the NCAA randomly selected 200 institutions for the study; it ultimately gathered usable data from a less-than-random 46, or 23%.<sup>99</sup> No doubt, many of the institutions with the least impressive graduation rates were among those who failed to cooperate with the study. In addition, the study fails to disclose how many of these 46 colleges engage in big-time intercollegiate competition and to what extent the final figures are affected by the success of athletes at Division II and III institutions where it is generally recognized that the academic problems of athletes are less severe.

In any event, the finding that 52% of athletes graduate within five years is hardly comforting. It may exceed the graduation rate for nonathletes, but the comparison is not entirely apt since nonathletes rarely receive full grants-in-aid for, effectively, their entire college career. In view of such aid, one would expect a substantially higher graduation rate for scholarship athletes in comparison with nonathletes, many of whom must drop out of school for lack of funds. A more revealing comparison would be between those athletes who compete in college sports for four years with

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results of an earlier survey indicating that 63% of NBA players had earned college degrees. J. DURSO, *THE SPORTS FACTORY* 82 (1975).

94. NCAA News Release, *Graduation Rate Higher for College Athletes Than for Nonathletes*, (May 1, 1981).

95. INSTITUTIONAL SERVICES DEPARTMENT, RESEARCH AND DEVELOPMENT DIVISION, AMERICAN COLLEGE TESTING PROGRAM, *National Collegiate Athletic Association - Survey of Graduation Rates After Five Years for Males First Entering College in Fall 1975*, (April 1981) 5.

96. *Id.* at 11.

97. *Id.*

98. *Id.* at 5, 9.

99. *Id.* at 1. Significantly, the report noted an earlier survey done by the American College Testing Program (ACT) for the NCAA in which usable data was obtained from 25% of the institutions solicited. The ACT remarked, "Because of the poor response rate, the statistics had to be interpreted with caution since data from responding colleges may have differed from non-responding colleges." Although no similar note of caution was sounded concerning the results of the current study, it is clearly warranted.

scholarship nonathletes who attend college for four years. The relative dearth of respectable unbiased graduation rate data, combined with the lack of cooperation the NCAA has received in its efforts to survey the area, even though the data should be readily available in the files of NCAA institutions, suggests that for many schools the statistics are embarrassing.<sup>100</sup> Whatever the percentage, there are clearly a large number of college athletes, recruited with a promise of an education, who are not receiving degrees.

For many of these athletes, there may be no harm done as a result of this failure. For those few who go on to successful careers in professional sports, the absence of a degree may be no liability.<sup>101</sup> For others, the failure to earn a degree may mean that they are no better off by virtue of their college athletic experience, but they are probably no worse off either. They are not likely to have fewer or poorer employment opportunities than would otherwise have been available to them. To the extent that participation in athletics may have obstructed educational opportunities by interfering with essential study time, inducing them to schedule useless courses, or removing incentives to learn by being assured of satisfactory grades regardless of performance, then they have been hurt. The available evidence, however, indicates generally no negative correlation between participation in athletics and the academic success of individual athletes.

The principal and pervasive harm resulting from the educational inadequacies of college athletes is to the integrity of our academic institutions. If athletes are not doing the work of genuine students, then a sham is being perpetrated. Institutions of higher education, which should be bastions of high ideals, are party to a hoax in which they are representing to the American public that the young men playing on their teams are real students. Too often in reality they are paid professional athletes, not remotely engaged in the full-time pursuit of scholarly objectives. The colleges and universities that contribute to this hoax may succeed on the playing field but are worthy of little respect in the community of scholars.

The NCAA has long sought to avoid such a hoax by mandating in its constitution that to remain eligible an athlete must be "maintaining satis-

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100. Some institutions appear to have relied on the Buckley Amendment as an excuse for failing to produce this information. As long as the data relates solely to graduation and particularly, if it does not identify individuals, concern with provisions of the Act are unjustified. See Family Educational Rights and Privacy Act of 1974, 20 U.S.C. § 1232(g) (1974).

101. George McGinnis, for example, left Indiana after his sophomore year to play in the ABA, and has prospered without a degree. He concluded "College did me no good whatsoever . . . I got a right to earn a living, and I don't have to be a college grad to do it." Of course, for the average pro athlete, the rewards are not as great and are available over only a few years. For such pros, the lack of degree may well be a handicap over the long term. J. BENAGH, *supra* note 1, at 129.

factory progress toward a baccalaureate or equivalent degree." Until recently, the individual institutions solely determined "satisfactory progress." As a result, athletes have not infrequently completed four years of eligibility, making "reasonable progress" in each year as defined by the institution, and yet remained far short of a degree, when their eligibility was exhausted.<sup>102</sup> There is usually no problem with the athlete registering for the requisite 12 hours each term which bylaw 5-1-(c) requires. Completing those courses, though, presents more difficulties. Some athletes, particularly in their last term of competition, register for the requisite hours, never attend class, and then drop out after the final game.<sup>103</sup>

At the January 1981 Convention, the NCAA adopted a normal progress rule requiring that an athlete complete 12 hours of credit each term to remain eligible.<sup>104</sup> This will not solve the problem, but it is a significant step in the right direction. It will still be possible for an athlete to accumulate the requisite credits each term in courses at the introductory level and in subject areas that will not fulfill degree requirements. Thus, we may still see an O.J. Simpson complete his college football career while 56 credit hours short of a degree,<sup>105</sup> but the frequency of such cases should diminish.

One continuing problem affecting the academic performance of student-athletes is the time and energy required for practice and participation in major college sports. There is little doubt that to compete in sports at the highest college levels requires such a substantial investment of the athlete's time and energy as to seriously detract from his studies. Some athletes have even found it "next to impossible to be a legitimate student and a football player too."<sup>106</sup> NCAA regulations of practice and playing seasons in basketball, football, and soccer may curb but do not eliminate the problem. Moreover, no effort has yet been made to control other sports where the problem is now perhaps most severe. In college baseball, athletes are now expected to play up to 100 game schedules or more and still fulfill their duties as students.<sup>107</sup>

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102. Underwood reports that a University of Cincinnati basketball player, after competing for four years, had accumulated approximately 50 credits, barely 25% of the number required by the school for graduation. Underwood, *supra* note 3, at 44.

103. Bob Knight, Transcript of *Forum, The Scandals in Intercollegiate Sports: How Should the Universities Respond* 15, Indiana University, Bloomington (Nov. 7, 1980).

104. Bylaws and Interpretations of the National Collegiate Athletic Association 5-(1)-(j)-(6), reprinted in NCAA MANUAL, *supra* note 21, at 74.

105. *Student-Athletes: Tackling The Problem*, PHI DELTA KAPPAN 7, 12 (Sept. 1980) (comment by J. Underwood in discussion edited by B. Hammel).

106. Meggyesy, *Football and Education*, in J. SCOTT, THE ATHLETIC REVOLUTION 57 (1971).

107. The 1981-1982 Arizona State baseball team, defending NCAA national champions, have a fall and spring combined schedule of 105 games plus conference and NCAA tournaments.

The reality is that in big-time intercollegiate sports, as Alabama Coach Bear Bryant has said, "[T]he boy is really an athlete first and a student second."<sup>108</sup> Befitting this secondary status, NCAA regulations serve to guarantee only minimal performance of student responsibilities—primarily the taking and completion of 12 credit hours of courses each term. Other regulations prescribing that the student be in "good academic standing" and make "satisfactory progress toward a degree"<sup>109</sup> rely on the autonomous standards of individual institutions to give them meaning. Recent experience indicates that institutions involved in the intense competition of intercollegiate athletics, when acting alone, are unlikely to impose on themselves standards that might hinder their ability to compete. As a result, such regulations, relying on autonomous action, are frequently ineffective.

The uncomfortable truth is that the academic performance of athletes has become "a national disgrace."<sup>110</sup> The forces contributing to the erosion of academic standards in intercollegiate athletics are powerful and will not be warded off by the relatively weak regulatory shield now imposed by the NCAA. Stronger rules and novel approaches are required if the academic integrity of college athletics is to be restored.

#### IV. LEGAL INITIATIVES

Seven former student-athletes are pursuing a novel approach in a California court.<sup>111</sup> They are suing officials of California State University at Los Angeles for, among other things, failing to provide the higher education promised when they agreed to bring their athletic talents to the university.<sup>112</sup> The athletes assert that this failure to educate breached contractual duties owed by the university to them under individual oral and written agreements and under NCAA rules.

The complaint alleges that a contract existed between each of the student-athletes and the university, pursuant to which the student-athletes agreed to provide their athletic services to the university for two to four years in exchange for an equal number of years of tuition-and-cost-free

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108. J. MICHENER, *supra* note 77, at 203 (1976).

109. NCAA CONST. art. 3, § 3 *reprinted in* NCAA MANUAL, *supra* note 21, at 16.

110. Underwood, *supra* note 3, at 40.

111. *See Echols v. Board of Trustees, California State University and Colleges*, No. C 266 777 (Ca. Super. Ct., L.A. County, filed Oct. 22, 1979).

112. The complaint recites ten causes of action. In addition to the breach of contract claims which are discussed in the text, the complaint asserts claims for cancellation of loans for fraud and failure of consideration, misrepresentation, conversion, and assumpsit, and seeks injunctive relief against state loan collection procedures on due process grounds. *Id.*

education.<sup>113</sup> The complaint carefully defined what was required by the promise of an education in terms of access to specific university services and resources, rather than in terms of educational attainment.<sup>114</sup> The achievement of an education is influenced by a host of factors, physical, neurological, emotional, cultural, and environmental which "affect the pupil subjectively, from outside the formal teaching process, and beyond the control of its ministers."<sup>115</sup> Thus, a university might do everything within its power for an athlete who nonetheless fails to become educated.<sup>116</sup> Thus, any deficiencies by the university will ordinarily have to be measured in terms of access to specific services or resources rather than achievement.

California State University at Los Angeles was allegedly deficient in providing the requisite access as follows: (1) It denied the athletes access to adequate counseling services by instructing them "to seek counseling *solely* from the coaches in the athletic department" and by prohibiting them "from seeking counseling services from the traditional counseling offices" of the university;<sup>117</sup> (2) coaches instructed the athletes "not to enroll in certain degree-requirement courses because such courses might jeopardize their eligibility status;"<sup>118</sup> (3) they were instructed "to repeat their enrollment in certain physical education courses even though such courses would be a total waste" to them having been satisfactorily completed in prior terms;<sup>119</sup> (4) unlike other students, they were never advised of the academic and course requirements for graduation; (5) they were never given individual course programs reasonably constructed to allow normal progress toward a degree; (6) they were counseled to accept grades for courses they never attended, removing incentives for learning; (7) and, they were denied access to remedial courses which were fundamental to their overcoming educational handicaps.<sup>120</sup> Due to this conduct by representatives of the university, the athletes assert that they failed to make reasonable progress toward a degree and to receive the higher edu-

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113. *Id.* at 11-12.

114. *Id.* at 12.

115. *Peter W. v. San Francisco Unified School District*, 60 Cal. App. 3d 814, 825, 131 Cal. Rptr. 854, 861 (1976) (rejecting complaint for educational malpractice by high school graduate who could read only at the fifth grade level). *Accord Hoffman v. Board of Educ. of City of N.Y.*, 49 N.Y.2d 121, 400 N.E.2d 317 (1979); *Donohue v. Copiague Union Free School Dist.*, 47 N.Y.2d 440, 391 N.E.2d 1352 (1979).

116. To paraphrase an old saying about a horse, you can lead a jock to class, but you can't make him think.

117. *See supra* note 111, at 12 (emphasis in original).

118. *Id.* at 12-13.

119. *Id.* at 13.

120. *Id.*

cation that had been promised.<sup>121</sup>

Whether this course of conduct will be legally significant depends at the outset on whether there is a contractual relationship between the athlete and the institution. The few courts that have considered the question have concluded that the recipient of an athletic grant-in-aid has contracted with the institution.<sup>122</sup> The terms of the contract may vary depending on the specific representations that have been made. Typically, however, the essence of the transaction is the exchange of the promise of athletic services by the student for the reciprocal promise of educational services by the institution. Weistart and Lowell have urged that the relationship should ordinarily be viewed, not as contractual, but as a traditional academic relationship in which the institution makes a conditional gift to a promising student.<sup>123</sup> The analysis, however, does not adequately account for the reality that the student is recruited and the scholarship granted only because of the expectation that he will perform in an extra-curricular activity. If he fulfills the expectation, the university may reap substantial rewards including increased revenues, alumni support, and national publicity. If, however, he chooses not to perform, the grant may be cancelled.<sup>124</sup>

Consistent with the notion urged by Weistart and Lowell, the Internal Revenue Service has ruled that in the absence of an explicit requirement of athletic performance, an athletic scholarship is not regarded as compensation for tax purposes.<sup>125</sup> The conclusion has been aptly criticized as "rather naive,"<sup>126</sup> since athletic awards "are made to secure the athlete's services and generally are maintained subject to his participation in col-

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121. *Id.*

122. *Begley v. Corporation of Mercer Univ.*, 367 F. Supp. 908, 909-10 (E.D. Tenn. 1973); *Taylor v. Wake Forest Univ.*, 16 N.C. App. 117, 120, 191 S.E.2d 379, 382 (1972).

123. J. WEISTART & C. LOWELL, *THE LAW OF SPORTS* § 1.06, at 11-12 (1979).

124. The NCAA Constitution authorizes the cancellation of an athletic scholarship if the athlete "voluntarily withdraws from a sport for personal reasons." NCAA CONST. art. 3, § 4-(c)-(2), *reprinted in* NCAA MANUAL, *supra* note 21, at 19. Other rules limit the period of any scholarship grant to one year. *See* NCAA CONST. art. 3, § 4-(d), *reprinted in* NCAA MANUAL *supra* note 21, at 19-20. The only restriction on nonrenewal is procedural — the athlete is entitled to a hearing if he believes his grant has not been renewed for "questionable reasons." NCAA CONST. art. 3, § 4-(g), *reprinted in* NCAA MANUAL *supra* note 21, at 21. No attempt is made to define "questionable reasons" and thereby give substance to the hearing requirement. AIAW rules are stricter, specifically prohibiting the withdrawal or nonrenewal of financial aid because of "skill performance, illness or injury." AIAW HANDBOOK 1980-1981 at 51. AIAW rules still permit terminating aid to any student who voluntarily withdraws from the sport or for any other reason fails to participate for a year. *Id.* at 49, 50.

125. Rev. Rul. 77-263, 1977-2 C.B. 47.

126. Kaplan, *Intercollegiate Athletics and the Unrelated Business Income Tax*, 80 Colum. L. Rev. 1430, 1462 (1980).

lege athletics."<sup>127</sup>

Even if the arrangement is characterized as a conditional gift, the promise of educational benefits probably would still be legally enforceable on an estoppel basis. The law recognizes that: "A promise which the promisor should reasonably expect to induce action or forbearance on the part of the promisee . . . and which does induce such action or forbearance is binding if injustice can be avoided only by enforcement of the promise."<sup>128</sup> When a university promises to provide educational services to an athlete if he will go to the school and play football, the promise will be legally binding if the athlete, relying on the promise, attends the school and plays football.<sup>129</sup> Accordingly, if the California State student-athletes are able to prove the allegations of their complaint, the law should provide a remedy, most likely under the contract theory asserted, but if not, under a promissory estoppel theory.

One other legal basis for the claim merits only brief mention. The athletes assert a cause of action as third party beneficiaries of a contract between California State University at Los Angeles and the NCAA.<sup>130</sup> That such a contract exists has support in the case law. Indeed, in a case involving the university's sister school, California State University at Hayward, the California Court of Appeals found that the relationship between the NCAA and its member institutions is determined by contract, the terms of which find expression in the constitution and bylaws of the association.<sup>131</sup> California State University at Los Angeles allegedly violated the NCAA Constitution and bylaws in several respects including: failing to adhere to admission standards; arranging for third parties to take standardized admission tests on behalf of plaintiffs; maintaining unofficial funds for disbursement to plaintiffs and other team members; failing to provide academic counseling; failing to provide plaintiffs with course plans which could realistically be used in making reasonable pro-

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127. *Id.*

128. RESTATEMENT (SECOND) OF CONTRACTS § 90 (1981).

129. The Restatement provides an appropriate illustration:

A, knowing that B is going to college, promises B that A will give him \$5,000 on completion of his course. B goes to college, and borrows and spends more than \$5,000 for college expenses. When he has nearly completed his course, A notifies him of an intention to revoke the promise. A's promise is binding and B is entitled to payment on completion of the course without regard to whether his performance was "bargained for" . . . .

RESTATEMENT (SECOND) OF CONTRACTS comment a, illustration 1 (1981).

130. *See supra* note 111, at 19-21.

131. Trustees of State Colleges and Universities v. NCAA, 82 Cal. App. 3d 461, 471, 147 Cal. Rptr. 187, 192 (1978); California State University, Hayward v. NCAA, 47 Cal. App. 3d. 533, 541, 121 Cal. Rptr. 85, 89-90 (1975).

gress toward a degree; and requiring plaintiffs to spend more than the allotted time in practice sessions.<sup>132</sup>

If these allegations are true, there is no doubt that NCAA rules, which express the terms of the contract between the university and the NCAA, have been violated. It does not follow, however, that plaintiffs' claim as third party beneficiaries has merit. On the contrary, the claim is probably not sustainable because the "contract" sets forth the means by which the rules are to be enforced and violations to be remedied. The Committee on Infractions considers charges of violations and metes out punishment satisfactory to the NCAA.<sup>133</sup> Like a party bound by an agreement for arbitration<sup>134</sup> or reasonable liquidated damages,<sup>135</sup> the NCAA would be limited to the remedies to which it and its member institutions have agreed: the enforcement system prescribed by the NCAA Constitution and By-laws. No greater remedy would be available to a third-party beneficiary since such a person's rights are limited by the terms of the contract.<sup>136</sup>

Moreover only "intended beneficiaries" are entitled to sue as third parties to a contract.<sup>137</sup> Student-athletes are most reasonably regarded as "incidental beneficiaries" who have no right to sue since they fail to meet one of the prerequisites of an "intended beneficiary." To be an intended beneficiary, recognition of a right to performance in the beneficiary must be appropriate to effectuate the intentions of the parties.<sup>138</sup> In view of the elaborate enforcement system established by the NCAA, it is doubtful that giving student-athletes a supplemental judicial remedy would effectuate the intentions of the NCAA and its member institutions.

The court thus should limit the student-athletes to a remedy for breach of the promises expressly made to them by representatives of the university. Although courts have been reluctant to interfere in the academic affairs of universities,<sup>139</sup> they have recognized on numerous occasions that promises made by universities to students are legally enforceable.<sup>140</sup> For

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132. See *supra* note 111, at 20.

133. See NCAA CONST. art. 4, § 6, Bylaw and Interpretations of the National Collegiate Athletic Association 8-5, reprinted in NCAA MANUAL, *supra* note 21, at 29-30, 100-01.

134. See RESTATEMENT (SECOND) OF CONTRACTS § 345(f) (1981).

135. See RESTATEMENT (SECOND) OF CONTRACTS § 356 (1981).

136. WILLISTON ON CONTRACTS § 364A, at 877 (3d ed. 1959). "Where the contract contains an arbitration clause which is legally enforceable, the general view is that the beneficiary is bound thereby to the same extent that the promisor is bound." *Id.*

137. RESTATEMENT (SECOND) OF CONTRACTS §§ 304, 315 (1981).

138. RESTATEMENT (SECOND) OF CONTRACTS § 302 (1981).

139. See *University of Missouri v. Horowitz*, 430 U.S. 964 (1978); *Keys v. Sawyer*, 353 F. Supp. 936, 940 (S.D. Tex. 1973); *Connelly v. University of Vermont*, 244 F. Supp. 156, 159 (D. Vt. 1965).

140. See, e.g., *DeMarco v. University of Health Sciences, The Chicago Medical School*, 40 Ill. App. 3d 474, 479-80, 352 N.E.2d 356, 361-62 (1976); *Lowenthal v. Vanderbilt, Chancery Court*,



example, in *Zumbrun v. University of Southern California*,<sup>141</sup> the court cited ten cases in support of the proposition that "the basic legal relation between a student and a private university or college is contractual in nature," with the "catalogues, bulletins, circulars, and regulations of the institution" being "a part of the contract."<sup>142</sup> The court found that plaintiffs stated a cause of action for breach of the contract when the school failed to provide the normal lectures and examinations in a sociology course. Similarly, if California State University at Los Angeles, contrary to official representations, failed to provide adequate counseling to its athletes, denied them access to advertised remedial courses, and refused to allow them to enroll in courses necessary to earn a degree, then a legal remedy should be available.

The remedy the athletes seek is specific enforcement of the contract and damages of \$5,000 for each quarter of schooling lost. It seems doubtful that they will be able to prove damages of that magnitude. Yet if they are able, for example, to establish reasonably calculable lost earnings attributable to the contract breach, then a substantial monetary award is possible.<sup>143</sup> The more likely and appropriate remedy would be to readmit the athletes to the university with an order requiring the school to provide the promised educational services along with necessary financial assistance.

Whether such relief is ever granted in *Echols v. Board of Trustees, California State Universities and Colleges*, the potential for similar judicial action exists whenever a school fails to meet its academic obligations to student-athletes. A university could minimize such self-imposed obligations through appropriate language in the tender of the athletic grant-in-aid narrowly stating the academic promises of the institution and disclaiming all others. The university should not, however, be able to evade its legal obligation to provide athletes, like other students, meaningful access to faculty, courses, and books that could lead to a degree and a genuine education.

Civil liability for breach of contract is not the only legal sanction potentially available for abuses in intercollegiate athletics. Ben Apuna, a former linebacker at Arizona State University, has filed a lawsuit against his academic adviser and other officials of the university for fraud, negli-

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Davidson County, Tennessee, No. A8525, Aug. 15, 1977, summarized in H. EDWARDS & V. NORDIN, HIGHER EDUCATION AND THE LAW 430-32 (1979).

141. 25 Cal. App. 3d 1, 101 Cal. Rptr. 499 (1972).

142. *Id.* at 504.

143. In *Lowenthal v. Vanderbilt*, the court recognized that, if proved, a student may recover lost earnings from a university that fails to meet its academic obligations. See H. EDWARDS & V. NORDIN, *supra* note 140, at 432.

gence, and interference with contract because of circumstances arising from the 1979 scandal.<sup>144</sup> Apuna had registered for a summer course at Rocky Mountain College. Allegedly on the advice and with the assistance of his academic adviser, he attended no classes, did no work, and received a B for the course.<sup>145</sup> He was subsequently suspended, along with seven fellow Arizona State football players, for receiving academic credits illegitimately. He now seeks \$2.4 million in damages because of the alleged adverse impact the suspension and scandal have had on his professional football career.<sup>146</sup>

Curtis Jones, a former prep basketball star in Detroit, has filed another lawsuit premised on academic abuses but raising different concerns.<sup>147</sup> He has sued the University of Michigan, North Idaho Junior College, and various high school and college coaches and officials for contributing to his mental breakdown through, among other things, the following alleged course of conduct: arranging his transfer at age fifteen from a school for slow learners to a regular junior high school where he could not and did not receive the special help he needed, for the sole purpose of exploiting his basketball talent; passing him through junior and senior high school although he did not do passing work in class, solely to maintain his basketball eligibility; inducing and assisting him to attend North Idaho Junior College, though he could not read or write well enough even to fill out the application (his high school coach did it for him); and cheating on examinations and otherwise improperly maintaining his junior college eligibility.<sup>148</sup> During Jones' second year in junior college, large segments of the student body learned that he could not read or write and began to insult and taunt him mercilessly. In the face of this psychological pressure, he suffered a complete mental breakdown, triggering psychosis and schizophrenia, for which he has required constant medical supervision since 1970. He seeks to recover damages exceeding \$15,000,000 on several legal theories including educational malpractice, breach of fiduciary duty, fraud, intentional infliction of mental distress, and denial of the right to an education.<sup>149</sup>

In addition to such civil actions,<sup>150</sup> it may occasionally be possible to

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144. Chron. Higher Educ., Nov. 25, 1981, at 9.

145. *Id.*

146. *Id.*

147. Complaint, Jones v. Snowden, No. 81-131648 (Wayne County Cir. Ct., Mich. filed Aug. 14, 1981.)

148. *Id.*

149. *Id.*

150. The problem of protecting academic standards was addressed in early 1982 in an unusual civil suit that, in effect, saw the court intervene against the imposition of academic requirements for

pursue criminal penalties for certain misconduct in the administration of intercollegiate athletics. In 1981, a New Mexico state court tried the University of New Mexico's former basketball coach, Norm Ellenberger, on 22 counts of fraud and filing false public vouchers.<sup>151</sup> Ellenberger billed the university for several thousand dollars of nonexistent travel expenses and then used the "extra money," he said, to help support the school's basketball program.<sup>152</sup> He was convicted of 21 of the 22 counts and could have received up to 105 years in prison; he received one year of unsupervised probation without having to make restitution.<sup>153</sup> In explaining the light sentence, Judge Phillip Baiamonte said:

I'm being asked to sentence a man who was only one cog in the entire machine called college ball. I'm being asked to sentence a man because he got caught, not because his conduct was unacceptable. The question is how fair is it to incarcerate a man for doing what almost everyone in the community wanted him to do — namely win basketball games at whatever cost. Naturally, rules and laws were broken. Is anyone really surprised? This is a problem that probably exists at every major college and university in the country.<sup>154</sup>

The judge urged "the nation's colleges and universities to get out of the business of conducting professional athletics and go back to the academics for which they were established."<sup>155</sup>

The "feathery tap on the wrist"<sup>156</sup> given to Ellenberger has been much criticized. Regardless of its wisdom, it serves to illustrate the limitations of the criminal justice system in responding to misconduct in college sports. Such misconduct will rarely offend the criminal law and even in those relatively few instances when it does, punishment is by no means assured.

Intercollegiate athletics are not and should not be immune from the constraints imposed by civil and criminal law on the rest of society. The reality, though, is that those general laws are unlikely to be fully enforced against popular coaches and universities. And even if they were, because

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an athlete. Mark Hall, a senior guard on the Minnesota Gophers basketball team, was rejected for admission to a degree granting program at the university on the reported grounds that his academic performance had not been adequate. He sought and obtained a temporary restraining order from U.S. District Judge Miles Lord on the theory that his rights to due process had been violated. N.Y. Times, Jan. 4, 1982, § C, at 11, col. 1.

151. SPORTS ILLUSTRATED, July 20, 1982, at 7.

152. *Id.*

153. *Id.*

154. N.Y. Times, *supra* note 150.

155. *Id.*

156. SPORTS ILLUSTRATED, *supra* note 151, at 7.

they are general and do not directly address the most serious problems in intercollegiate athletics, they would do little to improve the situation. What is needed is not more civil and criminal litigation but enforceable NCAA regulations that specifically respond to the special circumstances of college sports.

## V. REMEDIAL REGULATION

The first regulatory step that should be taken toward returning academic integrity to intercollegiate athletics is tightening admission requirements to preclude enrollment of young men who are illiterate or otherwise unqualified to do academic work. Instead of being satisfied with a mere 2.000 high school grade point average, the NCAA should require that a freshman who receives an athletic grant-in-aid to a Division I university demonstrate real academic competence through a high school transcript with at least a 2.50 average, or performance on the SAT or ACT which, considered in combination with the high school average, would predict satisfactory performance in college academic coursework.<sup>157</sup> In other words, the NCAA should return to something similar to, but stronger than, the old 1.600 Rule. Simultaneously, the NCAA should end the abuse of affirmative action programs in the service of athletic ends by making the percentage of athletes admitted under such standards proportionate to the percentage admitted by the school for the entire incoming class. For example, if the university limits special admissions to 4% of the incoming class, then only 4% of the incoming scholarship athletes should be admitted under these more lenient standards.<sup>158</sup>

If implemented, one impact of these changes probably would be to reduce athletic scholarships available to disadvantaged black youth.<sup>159</sup> This may seem harsh, but it is in the long-run best interest of both the athlete and NCAA institutions. Experience demonstrates that the athlete, black or white, who fails to meet the ordinary entrance requirements of a college will usually fail to earn either an education or a degree. He is, in reality, being exploited by the institution for his athletic talent and receiving nothing of real consequence in return. There is, of course, the possibil-

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157. The American Football Coaches Association has suggested a related proposal, known as the "triple option". It "would begin initially with a 2.25 grade-point-average requirement, instead of the present 2.0. If a high school graduate didn't have that, he could qualify for a scholarship by having either a combined verbal and math SAT score of 750 or a 17 on the ACT." *SPORTS ILLUSTRATED*, May 19, 1980, at 71.

158. *Id.*

159. In fact, Harry Edwards contends that earlier NCAA legislation reducing the limits on athletic scholarships was unfair to blacks because its impact was greatest on those perceived as "academic risks." Edwards, *Sport within the Veil*, *ANNALS* 116, 122 (1979).

ity of using college as a steppingstone to professional sports, but the chances are so remote that it is an illusion for all but the truly exceptional athletes.<sup>160</sup> If such athletes are unable to meet these standards, minor leagues are now available in all sports but football and even there, the aspiring athlete may hone his talents in junior college while attempting to raise his grades for the big-time. The institution, of course, will benefit from these tougher standards by the enhancement of perhaps its most precious asset, the integrity of its academic program.

Beyond strengthening admission standards, the NCAA should act, to require further proof that an athlete is making real progress toward a degree. Specifically, the NCAA should supplement its new normal progress rule with the requirement that the athlete progress in a program of studies through which he can qualify for a baccalaureate degree within no more than five years.<sup>161</sup> The rule should include language to insure that notwithstanding a change in an athlete's major, he will still be on course to receive a degree within five years. Experience in the Big Ten has demonstrated that such qualitative requirements are effective in raising the graduation rate of student-athletes.<sup>162</sup>

The NCAA should also act to reduce the control which athletic departments now have over the student-athlete's academic life. Academic counseling for athletes should be removed from the athletic departments where the dominant interest is in the athlete's eligibility for sports competition. Accordingly, he is often channeled into courses which serve the end of eligibility but are not necessarily consistent with the athlete's educational needs or goals. Counselors, outside the athletic department's domain, would be more likely to give these educational concerns higher priority.<sup>163</sup> In addition, the NCAA should strive to further limit the demands of athletics to leave more time for the athlete's academic pursuits.

While helpful, these relatively modest reforms are no panacea. A regulation offering the potential for real change in the conduct of intercollegiate athletics is one that would restrict athletic scholarships in accordance with the percentage of athletes who graduate. Penalizing athletic departments by taking away scholarships when athletes fail to graduate would

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160. Each year only about 150 football players (out of 41,000 on NCAA varsity rosters) and 50 basketball players (out of 15,000 on NCAA varsity rosters) go to the pros from college. On the average, they play 4.2 seasons in football and 3.4 seasons in basketball. *SPORTS ILLUSTRATED*, *supra* note 3, at 60.

161. See Legislative Proposal No. 30, Program, NCAA Convention (1981) (proposal of Big Ten Conference Universities).

162. Comments of Gwendolyn Norell, Faculty Athletic Representative, Michigan State University, on the floor of the NCAA Convention (Jan. 13, 1981).

163. See *THE HANFORD REPORT*, *supra* note 88, at Appendix 141.

add a powerful incentive to encourage the enrollment of only athletes who had demonstrated the potential to graduate and to make sure that they progress toward a degree during their years of athletic eligibility.<sup>164</sup> Such a proposal would have to be carefully framed since it could prove in practice to be counterproductive if, for example, the penalty were imposed only as to athletes who had completed four years of eligibility. To avoid the penalty, coaches might employ the various means at their disposal to induce the mediocre athlete to leave school prior to his fourth year.<sup>165</sup> If crafted with care, though, such a proposal could dramatically alter the academic character of intercollegiate athletics.

The effectiveness of each of these proposals depends not only on the soundness of its content but also on the adequacy of its enforcement. An unenforceable rule is probably worse than no rule because only the honorable will comply to their disadvantage.<sup>166</sup> Accordingly, an enforcement plan and an infusion of enforcement resources adequate to insure compliance should accompany any expansion of the protection afforded academic standards. This may require, for example, regular sworn reports to the NCAA disclosing the admissions credentials, courses, and grades of every athlete receiving an NCAA grant-in-aid. Any misrepresentations in such reports would subject the athlete and institution to severe sanctions.

A few serious observers of intercollegiate sports have suggested that any effort to impose real academic standards is hopeless and that the only solution is to end the hypocrisy by acknowledging and approving professionalism at least in big-time college football and basketball.<sup>167</sup> In other words, cut the tie between athletes and academics; pay the players and make no effort to require that they be students while giving them the opportunity to take courses if they wish. But treating the athletic depart-

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164. It is conceivable that some institutions might respond to this change by more readily granting degrees to undeserving athletes with the result that corruption is extended rather than reduced. The reluctance of institutions to do so in the past indicates that there would be considerable resistance to such a development. It is precisely the power of that resistance which is needed to bolster academic standards for athletes.

165. See G. SHAW, *MEAT ON THE HOOF* (1972) (explaining how football coaches at the University of Texas used various techniques to induce athletes to quit football early in their careers and give up their scholarships so that the scholarship could be committed to others).

166. G. Lueschen, a distinguished sports sociologist, has observed, "[T]he rewards that are at stake in a contest will determine the amount and severity of cheating." *SOCIAL PROBLEMS IN ATHLETICS* 70 (D. Landers ed. 1976). Given the sizeable rewards now available to the successful big-time college athletic programs, it is not surprising that some institutions have not only exploited the inadequate rules which now exist, but have cheated as well and can be expected to continue to cheat unless enforcement is effective.

167. E.g., J. MICHENER, *supra* note 77, at 199 (1976); J. ROONEY, *THE RECRUITING GAME* 159-85 (1980).

ment "as if it were a Burger King franchise"<sup>168</sup> serves no legitimate goals of a university. It may make money, but that is not the object of higher education. A university's primary function is to educate. Only if college athletics involve genuine students in an activity having educational merit should the universities be involved.

## VI. CONCLUSION

Intercollegiate sports possess significant educational potential for the athlete. From it, he may learn how to work with a group, to discipline himself, to pick himself up after being knocked down, and to develop competitive desire. He may experience the sense of fulfillment from giving his best effort in the pursuit of excellence and the freedom to express intense emotions in the thrill of victory or the agony of defeat. He may learn to appreciate the importance of commitment, of hard work, and of perseverance, and he may acquire specific knowledge and skills to be used in a career as a physical educator, coach, or professional athlete. While serving these educational ends, intercollegiate sports can also entertain and inspire thousands of spectators yielding immense revenues and prestige to the successful university. When it does, the temptation is great, perhaps irresistible, to lose sight of the educational goals in the pursuit of such laurels. Some colleges and universities have yielded to that temptation with the consequent denigration of academic standards in their athletic programs.<sup>169</sup> Other institutions, in order to compete effectively, have felt compelled to do likewise. For the same reason, it is unrealistic to expect institutions on their own to raise academic standards for their athletes. To succeed, the remedy must be collective, through regulation by the NCAA. The present regulatory scheme is inadequate to the task; it must be significantly strengthened and supplemented if we are to achieve academic integrity in college athletics befitting America's great institutions of higher education.

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168. Sports Illustrated, *supra* note 3, at 72.

169. USC Report, *supra* note 4, at 1.